



0000155010

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

JUL 30 2014

BOB STUMP, CHAIRMAN
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

DOCKETED BY

ne

IN THE MATTER OF THE INVESTIGATION)
OF THE FAILURE OF BELLEMONT WATER)
COMPANY, AN ARIZONA PUBLIC SERVICE)
CORPORATION, AND BELLEMONT WATER)
COMPANY SHAREHOLDERS BRAD NESS,)
GLORIA NESS, ERIK NESS, DIANAH NESS (aka)
DIANA NESS), OPERATING AS AN ARIZONA)
PUBLIC SERVICE CORPORATION IN FACT, TO)
COMPLY WITH ARIZONA STATUTES AND)
COMMISSION RULES AND REGULATIONS.)

DOCKET NO. W-02526A-10-0499

DECISION NO. 74612ORDER

Open Meeting
July 22-23, 2014
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACTA. Introduction

1. On December 15, 2010, Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), filed a Complaint against Bellemont Water Company, Inc. ("BWC" or "Company"), an Arizona public service corporation, and against Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (AKA Diana Ness) ("Named Shareholders"), operating as an Arizona public service corporation.

2. On April 18, 2011, that Complaint was amended to add an additional count. Also on that date, Staff filed a Motion for Preliminary Injunction.

3. The Complaint and Amended Complaint filed by Staff alleged that the Named Shareholders and officers of the Company were misusing Company funds. The Complaints and Motion for Preliminary Injunction sought to prohibit that conduct.

...

...

4. Following an Order to Show Cause Hearing conducted on May 3, 2011, the matter came before the Commission at Open Meeting on May 26 and 27, 2011. Decision No. 72376 was subsequently entered on May 27, 2011, which ordered as follows:

IT IS THEREFORE ORDERED that Bellemont Water Company shall not allow Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (aka Diana Ness) access to any funds and bank accounts of Bellemont Water Company until further order of the Commission.

IT IS FURTHER ORDERED that Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness (aka Diana Ness) shall not access any of the revenues and bank accounts of Bellemont Water Company until further order by the Commission.

5. As of July 18, 2013, Steven D. and Janet A. Adams had acquired the Company's stock through a foreclosure action against the Ness's for non-payment of debt owed by those Named Shareholders.

6. The Named Shareholders are no longer shareholders or officers of the Company and have no access to the Company or its funds. See correspondence from Bellemont Water Company, a copy of which is attached hereto as Exhibit A.

7. Staff is recommending that this matter be dismissed, as further detailed below.

B. Background

1. Bellemont Water Company ("B WC" or "the Company"), a subchapter "C" Corporation, was incorporated in Arizona in 1989.

2. BWC has operated under a certificate of convenience and necessity ("CC&N") which was originally granted in Commission Decision No. 58079, dated November 12, 1992. The Company is a Class D utility providing water service to eight metered commercial customers and standpipe service to non-captive customers approximately ten miles southwest of Flagstaff in Coconino County, Arizona.

3. On September 3, 2008, Commission Decision No. 70482 authorized the Company to charge a standpipe water service rate of \$15.00 per 1,000 gallons. This authorization contained several conditions pertaining to the handling and use of the funds received.

...

...

1 4. On September 3, 2009, the Company filed an application for a rate increase and
2 application for approval to incur long-term debt from the Water Infrastructure Finance Authority of
3 Arizona.

4 5. The Staff Report was filed on February 10, 2010, recommending a rate decrease and a
5 denial of financing.

6 6. On February 25, 2010, Staff filed its supplemental Staff Report clarifying the water
7 hauling surcharge language and standpipe conditions.

8 7. At the August 24, 2010, Open Meeting, Company President Brad Ness and Company
9 Vice President Eric Ness were present. Additionally Rodney Wilson and Klaudia Ness, BWC
10 Secretary, appeared telephonically.

11 8. During that Open Meeting, Klaudia Ness alleged that there had been mishandling of
12 Company funds by the Named Shareholders, specifically that BWC funds had been used by Company
13 president Brad Ness to make payments on personal debt, namely a loan or loans used by certain Ness
14 family members to purchase the stock of BWC.

15 9. Klaudia Ness also stated that the standpipe service meter was within Brad Ness' sole
16 control and that she was concerned that standpipe revenue was not being deposited into the separate
17 standpipe service meter bank account. Klaudia Ness stated that approximately \$6,000 of standpipe
18 revenue was unaccounted for.

19 10. The Commission voted on the rate and financing applications and issued Decision No.
20 71868. That Decision specifically reaffirmed the Commission's previous order regarding use of
21 standpipe revenue. Additionally, the Commission directed Staff to investigate the allegations of
22 mismanagement made at the Open Meeting. Subsequently, Staff requested that the instant docket be
23 opened to monitor the status and results of the investigation. Staff filed a complaint on December 16,
24 2010.

25 11. Staff conducted an investigation, the results of which were presented in the Staff
26 Report docketed herein on April 15, 2011. Staff made the following determinations:

- 27 a. BWC has violated the Commission rule related to the required filing of its 2009
28 Utilities Division Annual Report.

- 1 b. BWC has incurred long-term debt without the required Commission
2 authorization. Brad Ness, Gloria Ness, Erik Ness, and Dianah Ness have
3 caused BWC to incur long-term debt without the required Commission
4 authorization.
- 5 c. BWC has violated Commission orders related to the restricted handling and
6 use of standpipe revenues.
- 7 d. Brad Ness and Erik Ness have violated Commission orders related to the
8 restricted handling and use of standpipe revenues.
- 9 e. BWC and its officers failed to maintain the formalities of a separate corporate
10 existence.
- 11 f. Company earnings have been diverted for shareholders' personal use, unrelated
12 to the operations of the utility.
- 13 g. Brad Ness and Erik Ness have caused Company earnings to be diverted for
14 their personal use, unrelated to the operations of the utility.
- 15 h. The continuation of the identified inappropriate financial practices of the
16 Company and certain of its officers poses a serious threat to the Company's
17 financial health and, consequently, to the continued provision of safe and
18 reliable water service.

19 12. The Ness family members originally purchased their stock in the Company from the
20 McLain family, and executed a promissory note as partial payment for that stock.

21 13. The Ness family defaulted on that note and the McLain family brought a civil action
22 against the Ness family.

23 14. In order to settle that debt, the Ness family obtained a loan from Steven and Janet
24 Adams, secured by the Company stock.

25 15. The Ness family also defaulted on that obligation and, on September 7, 2012, a civil
26 action was filed by Steven and Janet Adams against Brad Ness; Gloria Ness; Erik Ness; Dianah Ness;
27 Klaudia Ness and her husband, Elliott Ness; and Bellemont Water Company.

28 ...

1 16. The claim against the Company was subsequently dismissed, and judgments were
2 entered against the individual defendants. As indicated in a minute entry issued by that Court on April
3 17, 2013, those judgments were to be at least partially satisfied by a transfer of the defendants' shares
4 of stock in the Company. A copy of that minute entry is attached hereto as Exhibit B.

5 **C. Company's Current Status**

6 1. Steven Adams has informed the Commission in correspondence docketed August 1,
7 2013, that Brad Ness, Gloria Ness, Erik Ness and Dianah Ness, the four shareholders and/or officers
8 who were prohibited from accessing any of the revenues and bank accounts of Bellemont Water
9 Company in Decision No. 70482, no longer had any ownership interest in or involvement with the
10 Company.

11 2. Further, the Company's annual report, filed with the Commission on August 3, 2013,
12 reflects that said defendants are no longer officers or directors of the Company. A copy of that annual
13 report is attached as Exhibit C.

14 **D. Staff's Analysis**

15 1. Given that the persons who were the subject of Staff's Complaint and the
16 Commission's Decision No. 70482 no longer have any interest in or control of the Company, this
17 matter is moot and the Complaint herein should be dismissed and docket should be closed.

18 **E. Conclusions of Law**

19 1. The Company is a public water service corporation within the meaning of Article XV
20 of the Arizona Constitution and A.R.S. 40-250 and 40-252.

21 2. The Commission has jurisdiction over the Company and of the subject matter of the
22 application.

23 3. It is in the public interest to dismiss the Complaint filed herein.

24 ...

25 ...

26 ...

27 ...

28 ...

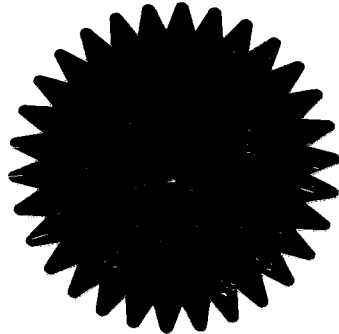
ORDER

IT IS THEREFORE ORDERED that the Complaint filed by Staff against Bellemont Water Company, Inc. on December 15, 2010, and amended on April 18, 2011, is dismissed and this docket is hereby closed.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION
CHAIRMAN
COMMISSIONER**EXCUSED**
COMM. BURNS
COMMISSIONER

COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of July, 2014.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:sms\JMA

1 Service List For Bellemont Water Company
Docket No. W-02526A-10-0499

2

3 Brad Ness

4 Gloria Ness

5 Erik Ness

6 Dianah Ness

3960 North Pinal Street

Kingman, AZ 86409

7 Klaudia Ness

BELLEMONT WATER COMPANY

8 P.O. Box 31176

9 Flagstaff, AZ 86003

10 Mary Keller Wong

10426 West Harmont Dr.

11 Peoria, AZ 85345

12 Andrew Abram

13 David M. Villadolid

Steven J. Lippman

14 BURCH & CRACCHIOLO, P.A.

702 E. Osborn Rd., Suite 200

15 Phoenix, AZ 85014

16 Mr. Steve M. Olea, Director

Utilities Division

17 Arizona Corporation Commission

1200 W. Washington

18 Phoenix, AZ 85007

19

20 Ms. Janice M. Alward

Chief Counsel, Legal Division

21 Arizona Corporation Commission

1200 West Washington Street

22 Phoenix, Arizona 85007

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Bellemont Water Company
P.O. Box 31176
Flagstaff, AZ 86003
928.526.3851
July 31, 2013

LEGAL

RECEIVED

2013 AUG -1 P 3:21

CORP COMMISSION
DOCKET CONTROL

Re: Docket # W-02526A-10-0499: Future Operating Plans Status Report

Commissioners and Staff:

I am writing in reference to the status report for the future operating plans for the Bellemont Water Company. The corporate status has been restored and the ownership has changed. As of the meeting on July 18th, 2013, Steven D. Adams is the President of Bellemont Water Company and Klaudia Ness is Secretary. Brad Ness, Gloria Ness, Erik Ness, Dianah Ness, and Elliott Ness no longer have ownership or involvement with Bellemont Water Company. The plans for the company are as follows:

- Klaudia Ness will remain Secretary/Manager of the company and will continue to do the day to day operations and is the main contact for Bellemont Water Company.
- We are diligently working towards ADEQ compliance and have obtained Tata and Howard Engineering Firm to engineer our new chlorination system for the required 4 log removal.
- Together Ms. Ness and Mr. Adams will continue to meet and discuss the much needed repairs for the company and plan out the strategy for moving forward on the repairs and upgrades. Due to financial limitations, we will be prioritizing the essential and beneficial repairs first.
- A new accountant has been obtained to bring the tax information current so that we may obtain a much needed rate increase. It is also to be documented that she is limited to the tax information, and will not be allowed to discuss information outside of her scope.
- Ms. Ness will be working on diligently bringing the compliance issues current as well as the annual report.
- Our goal is to aid Bellemont Water in becoming a strong and sound utility.

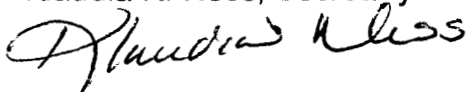
We are excited to be moving in a new direction. We look forward to the positive changes that are in the future for the Bellemont Water Company. Thank you.

Sincerely,

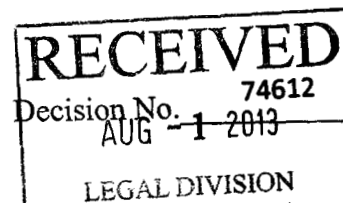
Steven D. Adams, President



Klaudia R. Ness, Secretary

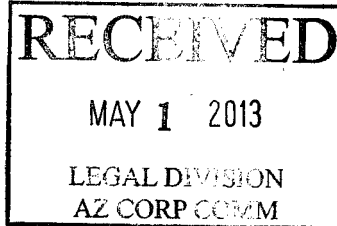


FILE COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit B



VH
2013 APR 24 PM 3:08
FILED

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCONINO

Dan R. Slayton, Judge
Division 2
Date: April 17, 2013

Deborah Young, Clerk
Valerie House, Deputy Clerk
Patricia Yerkes, Court Reporter

MINUTE ENTRY

STEVEN D. ADAMS and JANET A. ADAMS,
husband and wife,

Plaintiffs,

vs.

Cause No. CV 2012-00590

BRAD NESS and GLORIA NESS, husband and
wife; ERIK NESS and DIANA NESS, husband
and wife; ELLIOTT NESS and KLAUDIA NESS,
husband and wife; and BELLEMONT WATER
COMPANY, INC., an Arizona Corporation.

Defendants.

ACTION: Oral Argument

APPEARANCES: Counsel, David Villadolid, is present and appearing on behalf of the Plaintiffs. Defendant, Elliott Ness, is present and appearing *in propria persona*.

2:02 p.m.: Court is in session.

The Court notes this is the time set for Oral Argument; adding that there was a Motion to Dismiss regarding Bellemont Water Company, Inc.

Counsel Villadolid presents oral argument.

Court and Mr. Ness confer regarding the fact that no Response was filed in this matter; it is not included in the Court's file.

Court and Counsel confer regarding the amount to be considered for damages as well as the need for an evaluation of the value of shares.

SCANNED

Decision No. 74612


In re the Matter of: Adams vs. Ness
Cause No. CV 2012-00590
April 17, 2013

IT IS ORDERED entering Judgment in the amount of \$141, 014.58; either by way of Judgment by Default or by way of the pleading and up through today's date.

FURTHER ORDERED awarding the cost of attorney's fees to the Plaintiffs in the amount of \$ 8,307.00.

For the Record, the Plaintiff's have agreed not to execute said judgment until a valuation of the stock has been completed; then the amount will be offset against what is owed by the Defendant's in this matter.

2:28 p.m.: Court adjourns.



Cc: Laura Meyer, Burch & Cracchiolo, P.A., 702 E. Osborn Rd., Phoenix, AZ 85014
Klaudia Ness, 5030 E. Cortland Blvd., D-5, Flagstaff, AZ 86004
Bridget A. Humphrey, Legal Division, Arizona Corporation Commission, 1200 W. Washington St., Phoenix, AZ 85007
Brad Ness, 3960 N. Pinal St., Kingman, AZ 86409
Gloria Ness, 3960 N. Pinal St., Kingman, AZ 86409
Erik Ness, 3960 N. Pinal St., Kingman, AZ 86409
Diana Ness, 3960 N. Pinal St., Kingman, AZ 86409
Bellemont Water Company, c/o: Tevis Reigh, 7350 Hutton Ranch Rd., Flagstaff, AZ 86004
Div 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit C



E-FILED

**STATE OF ARIZONA
CORPORATION COMMISSION
CORPORATION ANNUAL REPORT
& CERTIFICATE OF DISCLOSURE**

04378691

DUE ON OR BEFORE 08/03/2013

FILING FEE \$45

PLEASE READ ALL INSTRUCTIONS. The following information is required by A.R.S. §§10-1522 & 10-11522 for all corporations organized pursuant to Arizona Revised Statutes, Title 10. The Commission's authority to prescribe this form is A.R.S. 121(A) & 10-3121(A). YOUR REPORT MUST BE SUBMITTED ON THIS ORIGINAL FORM. Make changes or corrections necessary. Information for the report should reflect the current status of the corporation.

-0214221-0

1. BELLEMONT WATER COMPANY
P.O. BOX 31176
FLAGSTAFF, AZ 86004

Business Phone: _____

(Business phone is optional.)

State of Domicile: ARIZONAType of Corporation: PROFIT

2. Statutory Agent: ELAUDIA MESS
Mailing Address: 2532 N FOURTH ST #272
City, State, Zip: FLAGSTAFF, AZ 86004

Statutory Agent's Street or Physical Address:
Physical Address:
City, State, Zip: AZ

ACC USE ONLY	
Fee	\$ <u>45.00</u>
Penalty	\$ <u>9.00</u>
Reinstatement	\$ <u>0.00</u>
Expedite	\$ _____
Resubmit	\$ _____

<p><i>If appointing a new statutory agent, the new agent MUST consent to that appointment by signing below. Note that the agent address must be in Arizona, (individual) or Wa, (corporation or limited liability company) having been designated the new Statute do hereby consent to this appointment until my removal or resignation pursuant to law.</i></p> <p>_____ Signature of new Statutory Agent</p> <p>_____ Printed Name of new Statutory Agent</p>

3. Secondary Address:

(Foreign Corporations are **REQUIRED** to complete this section).

4. CHARACTER OF BUSINESS

UTILITIES

Received: 08/07/2013 14:41

Decision No. 74612

-0214221-0 BELLEMONT WATER COMPANY

5. CAPITALIZATION:(For-profit Corporations and Business Trusts are **REQUIRED** to complete this section.)

Business trusts must indicate the number of transferable certificates held by trustees evidencing their beneficial interest.

5a. Please examine the corporation's original Articles of Incorporation for the amount of shares authorized.

Number of Shares/Certificates Authorized

Class

Series Within Class (if

1000000

COMMON

5b. Review all corporation amendments to determine if the original number of shares has changed. Examine the minutes for the number of shares issued.

Number of Shares/Certificates Issued

Class

Series Within Class (if

146965

COMMON

6. SHAREHOLDERS:(For-profit Corporations and Business Trusts are **REQUIRED** to complete this section.)

List shareholders holding more than 20% of any class of shares issued by the corporation, or having more than a 20% interest in the corporation.

STEVEN D. ADAMS

7. OFFICERS

Name: STEVEN D ADAMS

Title: PRESIDENT

Address: 2117 DESERT VIEW DR
WINSLOW, AZ 86047

Date Taking Office: 07/22/2013

Name: KLAUDIA NESS

Title: SECRETARY

Address: 2532 N FOURTH ST #271
FLAGSTAFF, AZ 86004

Date Taking Office: 09/08/2006

Name:
Title:
Address:
Date Taking Office:Name:
Title:
Address:
Date Taking Office:**8. DIRECTORS**

Name: KLAUDIA NESS

Address: 2532 N FOURTH ST #272
FLAGSTAFF, AZ 86004

Date Taking Office: 09/08/2006

Name:

Address:

Date Taking Office:

Name:
Address:
Date Taking Office:Name:
Address:
Date Taking Office: 74612
Decision No.

-0214221-0 BELLEFONT WATER COMPANY

9. FINANCIAL DISCLOSURE (A.R.S. §10-11622(A)(9))

Nonprofits – if your annual report is due on or before September 25, 2008, you must attach a financial statement (e.g. income & balance sheet including assets, liabilities). If your nonprofit annual report is due after September 25, 2008, a financial statement is required. Cooperative marketing associations must in all cases submit a financial statement. All other forms of corporations are to submit a financial statement no matter what date the annual report was due.

ONLY NONPROFIT CORPORATIONS MUST ANSWER THIS QUESTION:**9A. MEMBERS (A.R.S. §10-11622(A)(6))**This corporation **DOES** ☐ **DOES NOT** ☐ have**10. CERTIFICATE OF DISCLOSURE (A.R.S. §§ 10-202(D), 10-3202(D), 10-1622(A)(8) & 10-11622(A)(7))**

A. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or owns 10% of the issued and outstanding common shares or 10% of any other proprietary, beneficial or membership interest in been:

1. Convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the period immediately preceding the execution of this certificate?
2. Convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or a monopoly in any state or federal jurisdiction within the seven year period immediately preceding execution of this certificate?
3. Subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the seven year period preceding execution of this certificate where such injunction, judgment, decree or permanent order involved the violation of:
 - (a) fraud or registration provisions of the securities laws of that jurisdiction, or
 - (b) the consumer fraud laws of that jurisdiction, or
 - (c) the antitrust or restraint of trade laws of that jurisdiction?

One box must be marked: YES

If "YES" to A, the following information must be submitted as an attachment to this report for each person subject to actions stated in items 1 through 3 above.

- | | |
|---|---|
| 1. Full birth name. | 5. Date and location of birth. |
| 2. Full present name and prior names used. | 6. The nature and description of each corporation; the date and location; the court involved; and the file or cause number of each. |
| 3. Present home address. | |
| 4. All prior addresses for immediately preceding 7 year period. | |

B. Has any person who is currently an officer, director, trustee, incorporator, or who, in a For-profit corporation, controls or owns 10% of the issued and outstanding common shares, or 20% of any other proprietary, beneficial or membership interest in the corporation in any such capacity or held a 20% interest in any other corporation on the bankruptcy or receivership of that other corporation?

One box must be marked: YES

If "YES" to B, the following information must be submitted as an attachment to this report for each corporation subject to actions stated above.

- (a) Name and address of each corporation and the persons involved.
- (b) State(s) in which it: (i) was incorporated and (ii) transacted business.
- (c) Dates of corporate operation.

11. STATEMENT OF BANKRUPTCY OR RECEIVERSHIP (A.R.S. §§ 10-1623 & 10-11623)

A. Has the corporation filed a petition for bankruptcy or appointed a receiver? **One box must be marked: YES** ☐

If "Yes" to A, the following information must be submitted as an attachment to this report:

1. All officers, directors, trustees and major stockholders of the corporation within one year of filing the petition for bankruptcy or appointment of a receiver. If a major stockholder is a corporation, the statement shall list the current president, chairman of directors and major stockholders of such corporate stockholder. "Major stockholder" means a shareholder controlling twenty per cent of the issued and outstanding shares or twenty per cent of any proprietary, beneficial or interest in the corporation.
2. Whether any such person has been an officer, director, trustee or major stockholder of any other corporation within one year of filing the petition for bankruptcy or receivership of the other corporation. If so, for each such corporation give:
 - (a) Name and address of each corporation;
 - (b) State(s) in which it: (i) was incorporated and (ii) transacted business.
 - (c) Dates of operation.

12. SIGNATURES: Annual Reports must be signed and dated by at least one duly authorized officer or they will be null and void. I declare, under penalty of perjury, that all corporate income tax returns required by Title 43 of the Arizona Revised Statutes have been filed with the Arizona Department of Revenue. I further declare under penalty of perjury that I (we) have examined the certificate, including any attachments, and to the best of my (our) knowledge and belief they are true, correct and complete.

Name KLAUDIA NESS

Date 08/07/2013

Decision No. 74612